

Advisory Opinion

IECDB AO 2005-14

September 29, 2005

Gordon Hendrickson, Ph.D.
Administrator, Public Trust Division
Department of Cultural Affairs
600 East Locust
Des Moines, Iowa 50319

Dear Dr. Hendrickson:

This opinion is in response to your email letter of August 17, 2005, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the Public Trust Division Administrator for the Department of Cultural Affairs. You advise us that the State Historical Society of Iowa is the Historical Division of the Department of Cultural Affairs. The Society receives a number of materials, documents, and items from the public that are then placed on display or are otherwise made available for research and study. You desire clarification on whether receipt of these items triggers Iowa Code section 8.7 and requires the Department of Cultural Affairs to report them to the Iowa Ethics and Campaign Disclosure Board.

QUESTION:

Are the materials, documents, and items received by the State Historical Society of Iowa that are made available to the public for viewing, research, or study reportable "gifts, bequests, or grants" under Iowa Code section 8.7?

OPINION:

In 2005 Iowa Acts, House File 810, section 27, the General Assembly enacted new Iowa Code section 8.7 that requires, in part, "all gifts, bequests, and grants received by a

department or accepted by the governor on behalf of the state” to be reported to the Board.

In applying this language to your question, clearly the materials, documents, and items in question are not “grants” or “bequests.” The issue becomes whether or not they are “gifts” to the State Historical Society of Iowa that would require reporting under Iowa Code section 8.7.

The intent behind these donations is not to “benefit” the State Historical Society of Iowa, the Department of Cultural Affairs, or any officials or employees of the department. Rather, the intent is to make these items available to members of the public to use and enjoy. In addition, your department is maintaining these items in trust for the citizens of Iowa and not for the purpose of creating a “value” or “benefit” for your department.

Thus, the Board is of the opinion that materials, documents, and items that are donated to the State Historical Society of Iowa and that are made available to the public for viewing, research, or study are not reportable gifts under Iowa Code section 8.7.¹

We do note that monetary donations made by persons visiting the State Historical Museum would be reportable “gifts” under Iowa Code section 8.7. In addition, the Department of Cultural Affairs may receive other “gifts” that are not covered by the determinations in this opinion and would be reportable as well.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ A clear example would be those items that are open to public display in the State Historical Museum.